

**Regulatory Reaction to Industry Presentation on Thirteen
Implementation Issues
OQ Public Meeting
Houston, Texas
February 26, 2003**

Overall Reaction

“Seek First to Understand” We appreciate the industry effort to understand our intent in the inspection support documentation (protocols), and to develop and communicate a unified industry perspective on how to constructively move forward with a focus on the aspects of OQ that matter to pipeline safety and integrity.

Focus of First Round of Inspections We agree with the stated industry position that the first round of inspections mandated by Congress to occur during the next three years should focus on explicit and implied provisions of the rule as well as on the additional aspects of OQ that strongly relate to safety.

National Consensus Standard We support development of a national consensus standard that treats all aspects of operator qualification related to safety and integrity of the pipeline system. Broad regulatory participation in this effort is needed. We believe that we could use such a standard in whole or in part as the basis for supplementary rule making. Such a rulemaking would cover aspects of OQ that are important to pipeline safety and integrity. Further, we support the idea of incorporating in the consensus standard both substantive prescriptive requirements and alternative performance-based requirements for implementing OQ. We agree that a target date of June 2004 for development of the consensus standard is appropriate.

Use of Information Received We commit to carefully consider the perspective provided by industry on the key inspection process issues and to implement modifications to the protocols. These modifications will be completed within the next month.

Protocols as “Enforcement Documents” The industry representatives stated that industry views the protocols (together with any supplementary guidance) as “enforcement documents”. We fully intend that any enforcement action will be tied explicitly to the provision(s) of the rule that have been violated. The protocols will be used as inspector guidance on how to investigate the areas that regulators need to understand to evaluate the adequacy of operator practices needed to comply with provisions of the rule.

Comments on Industry Perspective

Note, the issues listed below appear in the “impact bins” developed at the San Antonio public meeting. The issue statements are those developed and presented by OPS in San Antonio. The numbers of the issues as presented by industry on 02/25/03 are shown in parentheses. Where there are differences in the way the issues were stated in San

Antonio and in Houston (see the first “High Impact Issue” below), the issues as stated in Houston are shown in italics.

High Impact Issues

Scope of OQ Inspections (Industry Issue 6): Should inspections go beyond evaluation of compliance with prescriptive requirements of the Rule?

(Industry Restatement: Inspection of the Approaches through which the Operator Expects to Achieve Improvement)

There was a difference in the statement of this issue between the San Antonio meeting and this meeting. Both issues are discussed below. The initial issue discussed in San Antonio was that regulators cannot await performance trends to show whether operator programs are working. Regulators need to examine compliance with the prescriptive requirements as well as to evaluate the set of practices necessary to implement provisions of the rule. Discussions at this meeting seemed to indicate that industry does not have an issue with regulatory evaluations beyond the prescriptive provisions of the rule as long as these evaluations do not lead to enforcement actions. More discussion on this topic would be useful.

We believe the restated issue (*Inspection of the Approaches through which the Operator Expects to Achieve Improvement*) can be addressed through processes designed to support an operator’s evaluation of the effectiveness of its own OQ Program. Some processes were listed as components of periodic program evaluation that the industry suggested in its discussion of Industry Issues 4, 8, 9 and 11.

Evaluation of KSAs (Industry Issue 10): Should evaluation leading to qualification consider knowledge, skills and ability (KSA)?

Industry agrees with the concept that a qualified individual performing a covered task may be required to possess one or all of the following: knowledge, skill and ability (KSA); and that the required KSAs should be verified by one or more evaluation designed for that purpose. Further, industry indicated that a method can be designed to evaluate more than one of the KSAs. Additionally, industry stated that “ability” should be understood to be broader than simply “physical capability”, and should include such attributes as mechanical ability.

The regulators understand the industry position, but caution that methods designed to evaluate more than one of the KSA attributes must have sufficient structure, including documentation, to assure their effectiveness. An example of needed structure is a performance evaluation combined with a knowledge evaluation. The knowledge evaluation should include a set of questions that has been selected to completely and objectively evaluate knowledge, and a current record of the person’s performance on the knowledge evaluation should be retained.

Re-evaluation Intervals (Industry Issue 4): How should re-evaluation Intervals be supported and justified?

Industry has initiated a study to investigate other regulatory agency practices on reevaluation intervals and their justification. It is our understanding that this study will also gather and evaluate data on the effectiveness of current practices within industry, including the measures used to monitor effectiveness. This study can be used to support selection of appropriate (conservative) reevaluation intervals and to vary these intervals by task if that is appropriate. This study is expected to be completed by mid-March.

OPS believes that such a study will contribute significantly to our understanding of appropriate reevaluation intervals, can be used in evaluation of operator intervals, and should ultimately be captured in a National Consensus Standard. Operators that wish to justify reevaluation intervals longer than those supported by the Standard will, however, need to demonstrate through performance data that these lengthened intervals do not adversely impact performance of covered tasks.

As noted above (see Industry Issue 6), OPS agrees with the tone and content of the industry discussion on Performance Monitoring that needs to be implemented by all operators, not just those wishing to extend their reevaluation intervals beyond established conservative limits. OPS disagrees with the observation made by an industry representative that there is no value in periodic monitoring of the performance of covered tasks by qualified individuals.

OPS agrees with the industry position that appropriate evaluation of incidents or accidents not only must identify the person(s) whose performance of a covered task contributed to the incident or accident, but also perhaps more importantly should identify the reason(s) for the failure. Potential reasons may include ineffective training, weak procedures, lack of supervision or appropriate monitoring by management, inappropriate reevaluation process or interval, or ineffective correction of weak performance by the qualified person.

Maintenance versus New Construction (Industry Issue 1): How should we distinguish between maintenance and new construction in defining covered tasks?

The industry's proposed definition is still unclear and requires additional specificity. OPS has developed definitions of "New Construction" and "Operations and Maintenance Task" that provide clarity to the distinction between the two activities. Further discussion of this important issue is needed.

Treatment of Emergency Response (Industry Issue 2): Does the rule cover emergency response tasks, if not, what are its bounds?

OPS believes that the industry position is consistent with ours in the following areas:

- Generally, in an emergency qualified persons should be used to perform tasks that normally must be performed by a qualified person,
- Professional emergency responders, such as fire fighters, need not be qualified by the operator to perform their jobs.

OPS is generally sympathetic with the need to use people who are near at hand to take actions to terminate an emergency condition. We need to discuss further the concept of remotely supervising non-qualified individuals (e.g., fire fighters, police) in terminating emergency conditions. We do, however, believe that industry needs to consider identifying people whose normal job responsibilities place them in a position where they may need to respond to an emergency condition and qualify these people in how to terminate anticipated emergency conditions (e.g., meter readers may encounter gas leaks and should be qualified to take appropriate action).

Further discussion is needed.

Medium Impact Issues

Additional Covered Tasks (Industry Issue 3): Is pipeline excavation a covered task?

OPS agrees with the stated industry position on the need for continuing evaluation to identify additional covered tasks.

OPS also agrees with the industry position that digging a hole to uncover a pipe segment is necessary to repair a leak or defect and therefore is a covered task. Further discussion is needed on the specific tasks that should be covered to focus on damage prevention (e.g., locating and marking), and on the role (and need for qualification) of swamper in preventing damage inflicted by third party excavators.

Further discussion is required.

Extent of Documentation (Industry Issue 11): What OQ records must be developed and maintained by operators?

OPS agrees with the stated industry position that operator documentation must demonstrate compliance with the OQ Rule, and, therefore, must go beyond the four records identified in the rule. The listing of potentially needed records presented by the industry, while acknowledged to be incomplete, represents a good start at identifying other needed documentation. OPS has provided protocols that are indicative of documentation needs. Reference to the documentation needed to comply with provisions of the Rule should be included in the Operator's OQ Program.

Further discussion is required on the issue of what records are needed (and possibly for what tasks) to support identification of persons who performed covered tasks that may have contributed to an incident or accident.

Abnormal Operating Conditions (Industry Issue 8): Should the list of AOCs be dynamic?

OPS and the industry agree that the listing of AOCs used in qualifying people to perform covered tasks can never be complete, but should dynamically reflect current knowledge on AOCs that may be encountered in performing covered tasks. We also agree that the major input to the dynamic AOC list is derived from the operators experience in operating the pipeline.

The current inspection protocols contain questions about the value of evaluating not only reportable incidents or accidents to add to the AOC listing, but also near misses. OPS believes that near misses do represent a rich source of information on potential AOCs, and should be explored through development of a national consensus standard.

Treatment of Training (Industry Issue 5): Should training practices be evaluated during OQ inspections?

Industry agrees that while it is not explicitly required by the Rule, training is a key to implementing many steps in the OQ Rule. Further, industry has committed to support a national consensus standard defining the role of training in OQ.

OPS believes that training is sufficiently important that we must continue to evaluate its role in current operator OQ programs. We do, however, acknowledge that information gathered on the role of training represents background information, and that deficiencies identified will not in the near-term lead to enforcement action, unless they can be related to deficiencies in the qualification of persons performing covered tasks.

Low Impact Issues

Criteria for Small Operators (Industry Issue 13): Will small operator OQ Programs be subject to the same criteria as large operators?

The industry has expressed a commitment to work with OPS in development of standards that will apply to small operators. OPS will pursue this offer. In the interim, OPS will apply the same criteria to all operators.

Direction and Observation of Non-Qualified People (Industry Issue 7): Is guidance needed to support supervisors in determining how many non-qualified people can be directed and observed by one qualified person?

Industry has agreed to develop a list of covered tasks that may not be performed by non-qualified individuals. Industry has further committed to develop guidance and criteria for establishing the appropriate span of control for tasks based on their complexity and related level of risk. OPS supports this development and will utilize the list and guidance/criteria when they are available.

Industry has also indicated that they believe that the length of time a non-qualified person should be allowed to perform covered tasks under the observation and direction of a qualified person is a business decision. OPS agrees.

Noteworthy Practices (Industry Issue 12): Should regulators play a role in the identification and communication of “Noteworthy Practices”?

Industry has agreed that recognition and communication of noteworthy practices should support improvement of efficiency and effectiveness of processes used to satisfy requirements of the OQ Rule. They have indicated that a voluntary process run by the industry associations is the best way to proceed. Further, industry has identified the national consensus standard process as the best way to establish parameters for this voluntary effort.

OPS agrees with this approach and looks forward to participating in the development of the consensus standard on an expedited basis.

Persons Contributing to an Incident or Accident (Industry Issue 9): Should operators have documented means to identify a covered task whose performance may have contributed to an incident/accident along with people who performed these tasks?

As stated above (Industry Issue 4) OPS agrees with the industry position that appropriate evaluation of incidents or accidents not only must identify the person(s) whose performance of a covered task contributed to the incident or accident, but also perhaps more importantly should identify the reason(s) for the failure. Potential reasons may include ineffective training, weak procedures, lack of supervision or appropriate monitoring by management, inappropriate reevaluation process or interval, or ineffective correction of weak performance by the qualified person.

Industry has indicated that operators may choose to implement corrective action, up to and including disqualification, for all individuals performing a covered task based on the level of documentation maintained (by individual, by crew, by region, by company), rather than to attempt to identify the individual responsible and take narrowly-focused corrective action. OPS views such an approach as being a business decision and acceptable to address the intent of the OQ Rule.

Further Discussion Needs

Specific Comments on Protocols OPS will complete any necessary revisions to the protocols within four weeks so they can be used to support the eight inspections planned between now and late June. We can infer some concerns with the protocols from discussion of the thirteen issues above, but we would welcome specific comments on areas where the industry believes the protocols push beyond the provisions of the rule, as well as on the organization of the protocols to increase their clarity.

Contractor Qualification Despite industry efforts to simplify the process of qualifying contractors that perform covered tasks, comments from the audience clearly indicated that more work is needed. OPS does not have a role in this effort since we have authority only over operators. We must, however, assure ourselves that contractors performing covered tasks are qualified on the tasks using operator-approved procedures, including but not limited to the equipment being operated or maintained. This issue has the potential to be the most significant source of enforcement actions.